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State of California Energy Resources Conservation and Development Commission.
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

March 27, 2003

Ref: Docket 03-RPS-1078

Dear Sirs:

I am representing two small hydro developers who are actively pursuing about 6-7 small projects in California. SB 1078 eliminates from RPS eligibility any projects that require a diversion permit by the SWRCB. Due to the mandated scope of diversion permitting, this eliminates ALL small hydro other than on closed municipal water supply systems, or perhaps on irrigation channels. Specifically, this "Diversion" exclusion absolutely precludes RPS eligibility for small hydro at existing dams – even when supported by fisheries concerns. Fisheries concerns are valid and very well protected by state and Federal Agencies in a highly managed licensing proceedings at a level unlike any other renewable energy source.

We suggest that the SB 1078 legislation diversion permit exclusion provision reaches into the preview of various California Agencies: Water Resources, Water Resources Control Board (WRCB), Fish and Game. The law goes far beyond a determination as to whether the resource is renewable – which it clearly is.

We request that this diversion provision be removed from the legislation. Of all the renewable energy sources, small hydro is by far, the most heavily regulated energy source. Please review this statement with Mr. James Canaday in the WRCB. In California, the WRCB is the coordinating state agency. The whole state regulatory process is also overseen at the federal level by the USFWS, NMFS, FS, Bureau Rec. EPA, BLM, Army Corps, and notably the FERC. Usually the Forest Service is the lead review agency and FERC the lead regulatory agency. The State and FERC licensing processes are lengthy, comprehensive, and exhaustive.

We have been made aware that some CEC staff has been informed that small hydro is very destructive in California. We are unaware either that there is significant small hydro in California outside of the shadow of large dams. Large hydro dams have clearly rearranged the face of California through power, irrigation, water storage, and flood control, but we do not believe there is significant damage caused by small hydro in this state due primarily to the topography. If there is any doubt, this might be studied and compared to other renewable resources.

If I can be of further assistance or provide clarification, please feel free to call at your convenience.

Respectfully

Richard D. Ely Principal
Davis Hydro